IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Nakhat Singh Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1123/2003)

D.B. Criminal Appeal under Section 374(2) Cr.P.C. against the judgment dated 7.10.2003 passed by the Additional Sessions Judge(Fast Track), Jalore Camp Bhinmal, in Sessions Case No.58/2003(15/2002)

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Date of Judgment: MAY 31,2007

P R E S E N T

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.V.K.Mathur, for the appellant
Mr.L.R. Upadhya, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.KHAN J.)**

1. The accused appellant Nakhat Singh has preferred this appeal under Section 374 Cr.P.C. against the judgment dated 7.10.2003 passed by Additional Sessions Judge (Fast Track), Jalore Camp Bhinmal, whereby he was convicted and sentenced for offence

under Sections 364-A, 365 & 348 I.P.C. as under:-

U/Sec.364-A IPC	Life imprisonment and a fine of Rs.5000/- and in default of payment of fine to further undergo one year's simple imprisonment.
U/Sec.365 IPC	Five years' rigorous imprisonment and a fine of Rs.3000/- and in default of payment of fine to further undergo six months' simple imprisonment.
U/Sec.348 IPC	Two years' rigorous imprisonment and a fine of Rs.1000/- and in default of payment of fine to further undergo four month's simple imprisonment.

All the sentences were ordered to run concurrently.

2. The factual matter as revealed by the prosecution during trial is that on 6.11.2001 complainant Premsukh Pachar submitted a written report at Police Station, Sanchore stating therein that his father Ram Niwas has been abducted. In the evening a day before filing the report his mother and sister after taking the whole luggage of house hold left Sanchore for Jodhpur at about 7:30 P.M., where he met them in the morning at about 4:00 A.M. Dr.Mohan Lal Vishnoi, a friend, who informed him at 6:00 A.M. about the abduction of his father, the same information was transmitted to Police Station, Sanchore through

telephone by him at 7:30 A.M. and left for Sanchore. When he reached Sanchore he came to know that his father while going with Surta Ram in a vehicle was intercepted between Paldi and Amli and was abducted. Nakhat Singh and Joga Ram were having joint business with his father for which they used to visit their house and used to give threatening about the business deal. It is alleged that both of them have abducted his father along with 4-5 other persons. Upon this information a case under Sections 364-A, 365, 341 and 348/34 I.P.C. was registered. After usual investigation, police submitted challan against accused Nakhat Singh.

3. The appellant denied the charges levelled against him and claimed trial. The prosecution in all produced 19 witnesses in support of their case. The accused Nakhat Singh in his statement recorded under Section 313 of the Code of Criminal Procedure admitted that he was having business transactions with Ram Niwas and his money was due against Ram Niwas. When he demanded his due money on many times but Ram Niwas did not pay his money on one pretext or the other and Ram Niwas got himself transferred from Sanchore to Jodhpur. When he came to know about this

fact and it was on Ram Niwas initiation that he went to Ahmedabad, where Ram Niwas promised to pay the whole money. While returning from Ahmedabad in Jeep, he was arrested along with Ram Niwas. D.W.1 Joga Ram was produced as defence witness. The learned Additional Sessions Judge (Fast Track), Jalore Camp Bhinmal after hearing both the parties convicted the appellant as aforesaid.

4. Both the parties were heard. The entire record was gone through.

5. The learned counsel for the accused appellant submitted that there was not an iota of evidence against the accused appellant to connect him with the offence under Section 364-A I.P.C. as no ransom was ever demanded by the accused appellant from any body else. There was business transactions and amount which Ram Niwas owes to him was demanded by the accused. It is not a case of ransom but a business deal and on the initiation of Ram Niwas they both went to Ahmedabad to settle their account but while returning they have been arrested by the police and Ram Niwas was recovered from his possession. So no case for

offence under Section 364-A I.P.C. is made out. The business transaction in between accused and Ram Niwas is admitted in F.I.R. by the complainant himself who is the son of Ram Niwas. There are many contradictions and infirmities in the statement of Ram Niwas as well as other supporting witnesses of the prosecution, which belies the story of the prosecution. When business transactions are settled with the consent and concurrence of Ram Niwas neither the case for offence under Section 364-A I.P.C. nor offence under Section 365 or 348 I.P.C. can be made out against the accused appellant because at the initiation of Ram Niwas, Nakhat Singh accused went to Ahmedabad, where Ram Niwas wanted to settle the accounts. The prosecution has failed to prove the charges levelled against the accused appellant.

6. The learned Public Prosecutor contended that from the evidence recorded, it is well proved that Ram Niwas was abducted by accused appellant Nakhat Singh, who took him away by force from one place to another and he was belaboured by appellant Nakhat Singh and demanded money, which amply covers the ingredients for offence under Section 364-A, 365 & 348 I.P.C. The

corroborative evidence of the prosecution can be relied on. Simple minor contradictions and variances cannot throw away the story of abduction.

7. For the offence under Section 364-A I.P.C. it is to be noted that whoever abducts any person or keeps a person in detention to give rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person **in order to compel** the Government or **any other person to do** or abstain from doing any act or to pay a ransom, then offence under Section 364-A I.P.C. is made out. Ransom is the consideration demanded or paid for the release of captured person.

8. The relevant statements of the prosecution witnesses for the offence under Section 364-A I.P.C. are P.W.1 Ram Niwas, who was abducted, P.W.13 Surta Ram, in whose presence Ram Niwas was taken away by the accused and P.W.2 Gani Mohammad the S.H.O., who at the time of arrest of accused recovered Ram Niwas from the accused's possession. As per the version of P.W.1 Ram Niwas, when he was going with Surta Ram in Jeep, they both were intercepted near Amli Village by

Nakhat Singh along with two other persons. The unknown man by putting pistol on his head pulled him from the vehicle and started beating and put up him into their vehicle. Surta Ram was also beaten and asked to run away. This statement is corroborated by P.W.13 Surta Ram. Ram Niwas was recovered by P.W.2 Gani Mohammad from the custody of Nakhat Singh. This statement of the witness clearly establishes the abduction of Ram Niwas. Nothing in the cross examination came to doubt over the story. Their testimony is corroborative, reliable and leads to prove the charge levelled against them.

9. Along with these statements if the statement of accused recorded under Section 313 Cr.P.C. is gone through, it clearly borne out that no offence under Section 364-A I.P.C. is made out against Nakhat Singh as Ram Niwas had no where said that any ransom was demanded from any other person nor Nakhat Singh asked him to do particular thing or abstain from doing particular thing. For offence under Section 364-A I.P.C. ransom should have been demanded from third person or the abducted person either to do or restrained to do some thing, which is not present in the instant case.

P.W.1 Ram Niwas in his statement simply says that while he was going with P.W.13 Surta Ram near Amli their vehicle was intercepted and Nakhat Singh along with 4-5 persons took him away forcibly after tying band around his eyes. He was belaboured by them and he received injuries. Beyond this he has stated nothing against accused Nakhat Singh. Of course he was taken from place to place and kept at different places secretly. While returning from Ahmedabad along with accused Nakhat Singh the police recovered Ram Niwas and Nakhat Singh was arrested.

10. P.W.1 Ram Niwas has himself admitted about few of documents, which D.W.1 Joga Ram producedin defence. Even the son of abducted P.W.1 Ram Niwas in the report Ex.P9 has admitted that there was a business transaction of Joga Ram and Nakhat Singh with his father for which they used to give threatening to his father. It means that there was a joint business deal of Nakhat Singh and Joga Ram on one side and Ram Niwas on another side. Nakhat Singh wanted to settle the accounts to which Ram Niwas was not paying any heed. All the three witnesses P.W.1 Ram Niwas, P.W.2 Gani Mohammad and P.W.13 Surta Ram clearly establishes

that Ram Niwas was abducted by appellant Nakhat Singh forcefully and Nakhat Singh was arrested while coming from Ahmedabad in a Jeep and Ram Niwas was recovered by P.W.2 Gani Mohammad, S.H.O., Police Station, Sanchore, who found Ram Niwas with Nakhat Singh and Chaina Ram. From the date of abduction till the date of recovery i.e. 5.11.2001 to 7.11.2001 as per statement of Ram Niwas he remained in custody of accused Nakhat Singh.

11. Intention of the abductor is to be adjudged from the facts and circumstances of each case, it is well proved that there was a business transaction in between Nakhat Singh and Ram Niwas victim, which is also admission of complainant P.W.5 Premsukh the son of Ram Niwas and Ram Niwas also admits about documents of business transactions to be of his own hand writing. It is clearly borne out that Ram Niwas was taken from one place to another by Nakhat Singh by force though to settle his business accounts but that does not entitle Nakhat Singh to take law in his own hand in order to settle the business transactions.

12. From perusal of the statements of the

prosecution witnesses and the documents produced and admission of the accused recorded under Section 313 Cr.P.C. it is well proved that offence under Section 365 has been proved against the accused appellant by the prosecution, whereas no case for offence under Section 364-A I.P.C. is made out against him. At the same time, it is also proved that after abduction, the accused appellant Nakhat Singh took away Ram Niwas and kept him secretly under his custody while moving from one place to another till he was arrested by police along with Ram Niwas. Accused Nakhat Sindh during captivity of Ram Niwas, gave threats to settle his business accounts and demanded his due amount. Ram Niwas was belaboured, is also proved by the medical evidence Ex.P4 proved by P.W.11 Dr.Babu Lal Vishnoi. Accordingly, it is proved that Ram Niwas was wrongfully confined by the accused from the date of abduction till his recovery for the purpose of settling the business accounts or satisfy the claim.

13. As discussed above, the offence under Section 365 and 348 I.P.C. is well proved against the accused appellant Nakhat Singh, but the offence under Section 364-A I.P.C. is not made out.

14. Accordingly, the appeal of the appellant accused Nakhat Singh is partly allowed. The conviction and sentence of accused under Section 364-A I.P.C. vide judgment of Additional Sessions Judge (Fast Track), Jalore Camp Bhinmal dated 7.10.2003 is set aside, but the conviction and sentence under Section 365 & 348 I.P.C. against him is maintained.

Excellency

(BHANWAROO KHAN) J. **(RAJESH BALIA) J.**

BKS/-